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Commission action on the application for regular authority, subject to the same restrictions, contained in Proposed Rule Section 21.43(c)(3), that would be imposed on applicants for new PPMRS facilities. BMJ&D notes that construction activities associated with the modification of existing facilities can be just as expansive as the construction activities for new facilities, especially where the construction of a new antenna tower or the replacement of antennas and transmitters is involved.

BMJ&D is concerned, however, that the conditions imposed on pre-grant construction in Proposed Rule Section 21.43(c)(3) are not clearly defined so that applicants will know the circumstances under which they may construct PPMRS facilities prior to Commission action on the application for regular authority or request for special temporary authority and, if pre-grant construction is precluded, what procedures must be followed. In particular, Proposed Rule Section 21.43(c)(3)(i)¹ does not fully explain the circumstances under which an application for a new or modified facility


¹ Proposed Rule Section 21.43(c)(3)(i) provides:

"An applicant may not commence or continue construction prior to the grant of an authorization as long as any of the following conditions persist:

(i) The application is mutually exclusive with a previously filed application or authorization . . .

will be considered mutually exclusive with a previously filed application or authorization.

BMJ&D notes that applicants should generally be aware, through the frequency coordination process prior to filing the application, whether the proposal will be electrically mutually exclusive with a previously filed application² or will cause harmful interference to a previously authorized station. However, the Commission's proposed rules do not address the situation where a proposal has erroneously been successfully coordinated due to a coordination error.



Company (Comments at p. 4), GTE Service Corporation (Comments at p. 6)³ and United States Telephone Association (Comments at p. 5) which have proposed a 12-month construction period in lieu of the Commission's proposal to shorten the construction period to six months. As many of the commentors have noted, the six-month construction period proposed by the Commission is impracticable. NPRM, para. 17. Further, since the PPMRS is essentially a stable, non-competitive radio service, unlike other more volatile and competitive services, e.g., the Multichannel Multipoint Distribution Service, where speculation in licenses is more likely to occur, the proposed six-month construction period is unnecessary to deter frequency warehousing and speculative filings. Additionally, the six-month construction period will not allow licensees, who either are ineligible for, or do not want to assume the costly risks associated with pre-grant construction, enough time to construct their facilities.

While the Commission has correctly noted that some licensees are able to construct and operate their PPMRS facilities within a few months of grant (NPRM at para. 17), many licensees are forced to curtail construction activities due to adverse weather conditions, i.e., heavy snows, inaccessible mountaintop sites, etc., which can delay

³ GTE Service Corporation stated that it would not be opposed to leaving the period of construction at 18 months. Comments at p. 6, n. 4.

construction for as long as four-to-five months or more, particularly between October and April, such that the PPMRS facility could not be constructed within the six-month period proposed by the Commission. If the 18-month construction period is not retained, licensees will be forced to file either for an extension of time to complete construction, or to reauthorize the proposed facilities, if the construction period is not extended. These applications

It is respectfully submitted that the proposed ten-day window for the filing of applications for Commission consent to involuntary assignments and transfers will place an onerous burden on licensees and their "trustees". In many instances, the involuntary act giving rise to the assignment of license or transfer of control is death or loss of mental capacity. A ten-day filing window for the filing of applications does not provide the parties, who are now attending to the affairs of the licensee, enough time to step-in and get all of the affairs of the licensee in order, gather and review all of the necessary records required to prepare an application for FCC consent, prepare the necessary applications, and file the applications with the Commission, particularly where the affected principal of the licensee dies suddenly or is incapacitated. The 30-day filing window, as presently exists, serves the public interest by allowing sufficient time for the licensee's representative to review its affairs and gather the

information in the proposed Form 494 Application, which requests more detailed information than the current Form 430 Licensee Qualification Report, will cause a substantial increase in the filing burdens placed on the public and the Commission's processing staff.

Proposed Rule Section 21.11(a), which requires licensees to file a Form 494 Application for New or Modified Microwave Radio Application to notify the Commission of any change in licensee qualification information within 30 days of the event, is likewise too burdensome. BMJ&D urges the Commission to adopt, instead, a two-tier standard under which licensees would file minor changes in information, that do not directly affect licensee qualifications, e.g., officers and directors (where citizenship issues are not raised), minority shareholders (where citizenship issues are not raised), licensee name, address or telephone number, etc., annually. If the change in information is major, such that it could directly impact a licensee's qualifications to hold a Commission license, e.g., information relating to citizenship, felony convictions, accusations of monopolistic activities, etc., a revised report would be filed within 30 days of the event giving rise to the change. This standard would serve the public interest since the Commission would be promptly made aware of any information which could impugn a licensee's qualifications to continue holding its common carrier license while, at the same time, relieve licensees

The prior frequency coordination process has significantly reduced the administrative burden on the Commission for assuring that PPMRS facilities are licensed on an interference-free basis. By the time an application is filed with the Commission, potential frequency conflicts have been identified and generally eliminated. The effectiveness of the process requires an accurate and reliable database of frequency usage. Any action on the part of the Commission, which would frustrate the frequency coordination process, would increase the Commission's application processing burden and is contrary to the public interest.

Nevertheless, BMJ&D agrees with the United States Telephone Association (Comments at p. 4) that the elimination of the FCC Form 494A. Certification of _____

notification that grants have been implemented is necessary to assure the continued integrity of the frequency coordination process. Accordingly, BMJ&D recommends that grantees be required to file a non-feeable letter with the Commission indicating whether the authorized facility, identified by call sign, location, frequency and file number, has been timely constructed. If the authorized facility has been timely constructed, such notification should be given within 30 days of the expiration of the construction period. If a proposal is not to be constructed, the licensee should likewise notify the Commission by letter so that the frequency can be deleted from the Commission's and the frequency coordinators' databases in a timely manner. The Commission should retain some procedure for advising the public of these filings, preferably by an on-line database.

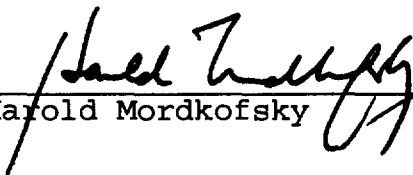
VI. Conclusion.

The Commission's proposals to allow pre-grant construction of PPMRS facilities and to streamline the application filing requirements are steps in the right direction. However, it appears that the Commission's attempts to reduce the paper work burden on applicants and licensees are creating new, more onerous burdens. Accordingly, BMJ&D urges the Commission to retain the current 18-month construction period for PPMRS facilities, retain the current 30-day period for the filing of

applications for Commission consent to the involuntary assignment of license or transfer of control, retain the Form 430 Licensee Qualification Report as the vehicle for reporting licensee qualifications, and to require the reporting of changes in minor, decisionally insignificant information on an annual basis rather than within 30 days of the event. BMJ&D also urges the Commission to retain an informal notification process under which licensee report the construction of PPMRS facilities so that the Commission's and frequency coordinators' databases are kept current.

Respectfully submitted,

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